QUEK CHING KIM v. REG.

[A. Cr. J. (Whyatt C.J.)· December 7, 1955]

[Singapore — Magistrate's Appeal No. 108 of 1955]

Common Gaming Houses Ordinance (Cap. 30), s. 4(c) — Charge wrongly worded — No offence disclosed in charge.

Criminal Procedure Code, 1955, s. 156(2) — Whether charge can be amended at the appellate stage.

In this case the appellant was charged and convicted on the following charge: "That you on or about the 4th day of January 1955 at 11.40 p.m. at 85 Rowell Road, Singapore, did assist in the management of a public lottery, to wit by being found in possession of 16 chap ji kee slips, and you have thereby committed an offence punishable under s. 4(c) Cap. 30." The appellant appealed against the conviction.

Held: (1) the charge was wrongly worded as it alleged that the appellant had assisted in the management of a lottery whereas the provisions of s. 4(c) of the Common Gaming Houses Ordinance relate only to "assisting" in the conduct of a lottery; (2) the charge as worded did not disclose any offence and therefore the conviction must be set aside.

The intention of s. 156(2) of the Criminal Procedure Code, which provides that any amendment to a charge should be read and explained to the accused, is that such amendments may only be made during the proceedings before a Magistrate.

MAGISTRATE'S APPEAL.

D. G. Osborne-Jones for the appellant.

J. F. McWilliam (Crown Counsel) for the respondent.

Whyatt C.J. : — This appeal was brought for the purpose of challenging the conviction by the learned Magistrate on the ground that the prosecution had failed to prove firstly, an overt act by the accused in furtherance of the offence, as it is suggested in *Braddell's* Commentary on Common Gaming Houses page 89 should be proved in cases of this kind, and secondly, that the chap ji kee slips, (which had no date on them) related to a lottery "then in progress"

These issues were fully argued by Counsel for the appellant and for the Crown but at the conclusion of their arguments the point was raised that the charge was erroneously worded and did not disclose an offence against section 4(c) of the Common Gaming Houses Ordinance. The charge, as framed, alleged that the accused had assisted in the "management" of a lottery whereas the provisions of section 4(c) relate only to "assisting" in the conduct of a lottery.

It was conceded by Counsel for the Crown that the charge as worded did not disclose any offence and that it was necessary for him to apply to amend the charge in order that the conviction might stand.

After an adjournment to allow Counsel on both sides to consider the position further, the hearing of the appeal was resumed and Counsel for the Crown did not seek to press the point that he was entitled to ask the Appellate Court to amend the charge at the appellate stage. In adopting this attitude Counsel for the Crown stated that he was influenced by the fact that sub-section (2) of section 156 of the Criminal Procedure Code provided that any amendment to a charge should be read and explained to the accused, but since on appeal the accused was not necessarily present, it seemed to follow that the intention was that such amendments could only be made during the proceedings before a Magistrate.

I agreed with the view of Counsel for the Crown that the charge as worded did not disclose any offence and it was now too late to amend it so as to bring it within the provisions of section 4(c) of the Common Gaming Houses Ordinance. I accordingly allowed the appeal.

Appeal allowed.

Solicitors for the appellant : *Osborne-Jones & Co.*

Re SOO LEOT

[Cr. R. J. (Buhagiar J.) November 29, 1955]

[K. L. — Criminal Revision No. 24 of 1955]

Criminal Procedure Code (Cap. 6), s. 325 — Revision — Powers of High Court — Accomplice — Whether witness is an accomplice — Hearsay evidence.

In this case Soo Leot was charged with offences punishable under s. 414 and under ss. 465 and 471 of the Penal Code. At the conclusion of the trial the learned Magistrate acquitted and discharged the accused of all charges. On the hearing of the case on revision, counsel for the accused raised a preliminary objection to the revision. He submitted that in cases of acquittal, if the Public Prosecutor has not preferred an appeal, the High Court ought not to interfere.

The learned Magistrate in this case held that a witness was an accomplice as he had assisted the accused in disposing of 3 bicycles. It was clear from the evidence that the witness did not assist the accused in disposing of the bicycles which were the subject of the charges before the Court.

Held: (1) the powers of the High Court in revision are exercisable at the discretion of the Court and that discretion is untrammelled and free, so as to be fairly exercised according to the exigencies of each case; (2) in this case, the learned Magistrate was wrong in holding that the witness was an accomplice and therefore the order of acquittal and discharge must be set aside and a new trial ordered.

Cases referred to:—

(1) *Sherkhan v. Anwarkhan* A.I.R. 1927 Nag. 170.